

**Ronald H. Lewis, M.D., Chair**  
**Panel A**

1 XAVIER BECERRA  
Attorney General of California  
2 JUDITH T. ALVARADO  
Supervising Deputy Attorney General  
3 REBECCA L. SMITH  
Deputy Attorney General  
4 State Bar No. 179733  
California Department of Justice  
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7 *Attorneys for Complainant*

8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 DWITE DEAN DAHMS, M.D.  
14 375 Rolling Oaks Drive, Suite 200  
Thousand Oaks, California 91361

15 Physician's and Surgeon's Certificate  
16 No. G 52355,

17 Respondent.

Case No. 800-2015-014724

OAH No. 2018051094

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

18  
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical  
23 Board of California ("Board"). She brought this action solely in her official capacity and is  
24 represented in this matter by Xavier Becerra, Attorney General of the State of California, by  
25 Rebecca L. Smith, Deputy Attorney General.

26 2. Respondent Dwite Dean Dahms, M.D. ("Respondent") is represented in this  
27 proceeding by attorney Carolyn W. Lindholm, whose address is 355 South Grand Avenue, Suite  
28 1750, Los Angeles, California 90071.

1           3.     On or about May 21, 1984, the Board issued Physician's and Surgeon's Certificate  
2     No. G 52355 to Respondent. That license was in full force and effect at all times relevant to the  
3     charges brought in Accusation No. 800-2015-014724, and will expire on July 31, 2019, unless  
4     renewed.

5                                   JURISDICTION

6           4.     Accusation No. 800-2015-014724 was filed before the Board, and is currently  
7     pending against Respondent. The Accusation and all other statutorily required documents were  
8     properly served on Respondent on April 25, 2018. Respondent filed his Notice of Defense  
9     contesting the Accusation.

10          5.     A copy of Accusation No. 800-2015-014724 is attached as Exhibit A and  
11     incorporated herein by reference.

12                                   ADVISEMENT AND WAIVERS

13          6.     Respondent has carefully read, fully discussed with counsel, and understands the  
14     charges and allegations in Accusation No. 800-2015-014724. Respondent has also carefully read,  
15     fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
16     Disciplinary Order.

17          7.     Respondent is fully aware of his legal rights in this matter, including the right to a  
18     hearing on the charges and allegations in the Accusation; the right to confront and cross-examine  
19     the witnesses against him; the right to present evidence and to testify on his own behalf; the right  
20     to the issuance of subpoenas to compel the attendance of witnesses and the production of  
21     documents; the right to reconsideration and court review of an adverse decision; and all other  
22     rights accorded by the California Administrative Procedure Act and other applicable laws.

23          8.     Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
24     every right set forth above.

25                                   CULPABILITY

26          9.     Respondent does not contest that, at an administrative hearing, Complainant could  
27     establish a prima facie case with respect to the charges and allegations contained in Accusation  
28     No. 800-2015-014724 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 800-2015-014724 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

## CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (“PDF”) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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## **DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 52355 issued to Respondent Dwite Dean Dahms, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **EDUCATION COURSE.** Within sixty (60) calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than forty (40) hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education ("CME") requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for sixty-five (65) hours of CME of which forty (40) hours were in satisfaction of this condition.

2. **PRESCRIBING PRACTICES COURSE.** Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education ("CME") requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

1 Respondent shall submit a certification of successful completion to the Board or its  
2 designee not later than fifteen (15) calendar days after successfully completing the course, or not  
3 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

4 3. MEDICAL RECORD KEEPING COURSE. Within sixty (60) calendar days of the  
5 effective date of this Decision, Respondent shall enroll in a course in medical record keeping  
6 approved in advance by the Board or its designee. Respondent shall provide the approved course  
7 provider with any information and documents that the approved course provider may deem  
8 pertinent. Respondent shall participate in and successfully complete the classroom component of  
9 the course not later than six (6) months after Respondent's initial enrollment. Respondent shall  
10 successfully complete any other component of the course within one (1) year of enrollment. The  
11 medical record keeping course shall be at Respondent's expense and shall be in addition to the  
12 Continuing Medical Education ("CME") requirements for renewal of licensure.

13 A medical record keeping course taken after the acts that gave rise to the charges in the  
14 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
15 or its designee, be accepted towards the fulfillment of this condition if the course would have  
16 been approved by the Board or its designee had the course been taken after the effective date of  
17 this Decision.

18 Respondent shall submit a certification of successful completion to the Board or its  
19 designee not later than fifteen (15) calendar days after successfully completing the course, or not  
20 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

21 4. MONITORING - PRACTICE. Within thirty (30) calendar days of the effective date  
22 of this Decision, Respondent shall submit to the Board or its designee for prior approval as a  
23 practice monitor, the name and qualifications of one or more licensed physicians and surgeons  
24 whose licenses are valid and in good standing, and who are preferably American Board of  
25 Medical Specialties ("ABMS") certified. A monitor shall have no prior or current business or  
26 personal relationship with Respondent, or other relationship that could reasonably be expected to  
27 compromise the ability of the monitor to render fair and unbiased reports to the Board, including  
28 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree

1 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

2 The Board or its designee shall provide the approved monitor with copies of the Decision  
3 and Accusation, and a proposed monitoring plan. Within fifteen (15) calendar days of receipt of  
4 the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed  
5 statement that the monitor has read the Decision and Accusation, fully understands the role of a  
6 monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees  
7 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the  
8 signed statement for approval by the Board or its designee.

9 Within sixty (60) calendar days of the effective date of this Decision, and continuing  
10 throughout probation, Respondent's practice shall be monitored by the approved monitor.  
11 Respondent shall make all records available for immediate inspection and copying on the  
12 premises by the monitor at all times during business hours and shall retain the records for the  
13 entire term of probation.

14 If Respondent fails to obtain approval of a monitor within sixty (60) calendar days of the  
15 effective date of this Decision, Respondent shall receive a notification from the Board or its  
16 designee to cease the practice of medicine within three (3) calendar days after being so notified.  
17 Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring  
18 responsibility.

19 The monitor shall submit a quarterly written report to the Board or its designee which  
20 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
21 are within the standards of practice of medicine, and whether Respondent is practicing medicine  
22 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the  
23 quarterly written reports to the Board or its designee within ten (10) calendar days after the end of  
24 the preceding quarter.

25 If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar  
26 days of such resignation or unavailability, submit to the Board or its designee, for prior approval,  
27 the name and qualifications of a replacement monitor who will be assuming that responsibility  
28 within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor

1 within sixty (60) calendar days of the resignation or unavailability of the monitor, Respondent  
2 shall receive a notification from the Board or its designee to cease the practice of medicine within  
3 three (3) calendar days after being so notified. Respondent shall cease the practice of medicine  
4 until a replacement monitor is approved and assumes monitoring responsibility.

5 In lieu of a monitor, Respondent may participate in a professional enhancement program  
6 approved in advance by the Board or its designee that includes, at minimum, quarterly chart  
7 review, semi-annual practice assessment, and semi-annual review of professional growth and  
8 education. Respondent shall participate in the professional enhancement program at  
9 Respondent's expense during the term of probation.

10 5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
11 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
12 Chief Executive Officer at every hospital where privileges or membership are extended to  
13 Respondent, at any other facility where Respondent engages in the practice of medicine,  
14 including all physician and locum tenens registries or other similar agencies, and to the Chief  
15 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
16 Respondent. Respondent shall submit proof of compliance to the Board or its designee within  
17 fifteen (15) calendar days.

18 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

19 6. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE  
20 NURSES. During probation, Respondent is prohibited from supervising physician assistants and  
21 advanced practice nurses.

22 7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
23 governing the practice of medicine in California and remain in full compliance with any court  
24 ordered criminal probation, payments, and other orders.

25 8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
26 under penalty of perjury on forms provided by the Board, stating whether there has been  
27 compliance with all the conditions of probation.

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Respondent shall submit quarterly declarations not later than ten (10) calendar days after the end of the preceding quarter.

9. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing thirty (30) calendar days prior to the dates of departure and return.

10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

1        11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
2 its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting  
3 more than thirty (30) calendar days and within fifteen (15) calendar days of Respondent's return  
4 to practice. Non-practice is defined as any period of time Respondent is not practicing medicine  
5 as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours  
6 in a calendar month in direct patient care, clinical activity or teaching, or other activity as  
7 approved by the Board. If Respondent resides in California and is considered to be in non-  
8 practice, Respondent shall comply with all terms and conditions of probation. All time spent in  
9 an intensive training program which has been approved by the Board or its designee shall not be  
10 considered non-practice and does not relieve Respondent from complying with all the terms and  
11 conditions of probation. Practicing medicine in another state of the United States or Federal  
12 jurisdiction while on probation with the medical licensing authority of that state or jurisdiction  
13 shall not be considered non-practice. A Board-ordered suspension of practice shall not be  
14 considered as a period of non-practice.

15        In the event Respondent's period of non-practice while on probation exceeds eighteen (18)  
16 calendar months, Respondent shall successfully complete the Federation of State Medical Boards'  
17 Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment  
18 program that meets the criteria of Condition 18 of the current version of the Board's "Manual of  
19 Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of  
20 medicine.

21        Respondent's period of non-practice while on probation shall not exceed two (2) years.

22        Periods of non-practice will not apply to the reduction of the probationary term.

23        Periods of non-practice for a Respondent residing outside of California will relieve  
24 Respondent of the responsibility to comply with the probationary terms and conditions with the  
25 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
26 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
27 Controlled Substances; and Biological Fluid Testing.

28        ///

1           12. COMPLETION OF PROBATION. Respondent shall comply with all financial  
2 obligations (e.g., restitution, probation costs) not later than one-hundred twenty (120) calendar  
3 days prior to the completion of probation. Upon successful completion of probation,  
4 Respondent's certificate shall be fully restored.

5           13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
6 of probation is a violation of probation. If Respondent violates probation in any respect, the  
7 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
8 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke  
9 Probation, or an Interim Suspension Order is filed against Respondent during probation, the  
10 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall  
11 be extended until the matter is final.

12           14. LICENSE SURRENDER. Following the effective date of this Decision, if  
13 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
14 the terms and conditions of probation, Respondent may request to surrender his or her license.  
15 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
16 determining whether or not to grant the request, or to take any other action deemed appropriate  
17 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
18 shall within fifteen (15) calendar days deliver Respondent's wallet and wall certificate to the  
19 Board or its designee and Respondent shall no longer practice medicine. Respondent will no  
20 longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical  
21 license, the application shall be treated as a petition for reinstatement of a revoked certificate.

22           15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
23 with probation monitoring each and every year of probation, as designated by the Board, which  
24 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of  
25 California and delivered to the Board or its designee no later than January 31 of each calendar  
26 year.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Carolyn W. Lindholm. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 12-14-18

  
DWITE DEAN DAHMS, M.D.  
Respondent

I have read and fully discussed with Respondent Dwite Dean Dahms, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/14/18

  
CAROLYN W. LINDHOLM  
Attorney for Respondent

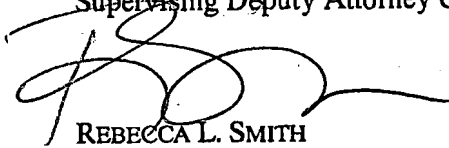
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 12/17/18

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
JUDITH T. ALVARADO  
Supervising Deputy Attorney General

  
REBECCA L. SMITH  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Accusation No. 800-2015-014724**

1. XAVIER BECERRA  
Attorney General of California  
2. JUDITH T. ALVARADO  
Supervising Deputy Attorney General  
3. REBECCA L. SMITH  
Deputy Attorney General  
4. State Bar No. 179733  
California Department of Justice  
5. 300 South Spring Street, Suite 1702  
Los Angeles, California 90013  
6. Telephone: (213) 269-6475  
Facsimile: (213) 897-9395  
7. *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO April 25, 2018  
BY: [Signature] ANALYST

8. **BEFORE THE**  
9. **MEDICAL BOARD OF CALIFORNIA**  
10. **DEPARTMENT OF CONSUMER AFFAIRS**  
11. **STATE OF CALIFORNIA**

12. In the Matter of the Accusation Against:

Case No. 800-2015-014724

13. DWITE DEAN DAHMS, M.D.  
375 Rolling Oaks Drive, Suite 200  
Thousand Oaks, California 91361

**ACCUSATION**

14. Physician's and Surgeon's Certificate  
No. G 52355,

15. Respondent.

16.  
17.  
18. Complainant alleges:

19. **PARTIES**

20. 1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official  
21. capacity as the Executive Director of the Medical Board of California, Department of Consumer  
22. Affairs ("Board").

23. 2. On May 21, 1984, the Board issued Physician's and Surgeon's Certificate number G  
24. 52355 to Dwite Dean Dahms, M.D. ("Respondent"). That license was in full force and effect at  
25. all times relevant to the charges brought herein and will expire on July 31, 2019, unless renewed.

26. **JURISDICTION**

27. 3. This Accusation is brought before the Board under the authority of the following  
28. provisions of the California Business and Professions Code ("Code") unless otherwise indicated.

1       4.     Section 2004 of the Code states:

2       “The board shall have the responsibility for the following:

3       “(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice  
4     Act.

5       “(b) The administration and hearing of disciplinary actions.

6       “(c) Carrying out disciplinary actions appropriate to findings made by a panel or an  
7     administrative law judge.

8       “(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of  
9     disciplinary actions.

10       “(e) Reviewing the quality of medical practice carried out by physician and surgeon  
11     certificate holders under the jurisdiction of the board.

12       “...”

13       5.     Section 2227 of the Code states:

14       “(a) A licensee whose matter has been heard by an administrative law judge of the Medical  
15     Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default  
16     has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary  
17     action with the board, may, in accordance with the provisions of this chapter:

18       “(1) Have his or her license revoked upon order of the board.

19       “(2) Have his or her right to practice suspended for a period not to exceed one year upon  
20     order of the board.

21       “(3) Be placed on probation and be required to pay the costs of probation monitoring upon  
22     order of the board.

23       “(4) Be publicly reprimanded by the board. The public reprimand may include a  
24     requirement that the licensee complete relevant educational courses approved by the board.

25       “(5) Have any other action taken in relation to discipline as part of an order of probation, as  
26     the board or an administrative law judge may deem proper.

27       “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical  
28     review or advisory conferences, professional competency examinations, continuing education

1 activities, and cost reimbursement associated therewith that are agreed to with the board and  
2 successfully completed by the licensee, or other matters made confidential or privileged by  
3 existing law, is deemed public, and shall be made available to the public by the board pursuant to  
4 Section 803.1.”

5 6. Section 2234 of the Code, states:

6 “The board shall take action against any licensee who is charged with unprofessional  
7 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not  
8 limited to, the following:

9 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
10 violation of, or conspiring to violate any provision of this chapter.

11 “(b) Gross negligence.

12 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or  
13 omissions. An initial negligent act or omission followed by a separate and distinct departure from  
14 the applicable standard of care shall constitute repeated negligent acts.

15 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate  
16 for that negligent diagnosis of the patient shall constitute a single negligent act.

17 “(2) When the standard of care requires a change in the diagnosis, act, or omission that  
18 constitutes the negligent act described in paragraph (1), including, but not limited to, a  
19 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the  
20 applicable standard of care, each departure constitutes a separate and distinct breach of the  
21 standard of care.

22 “(d) Incompetence.

23 “...”

24 7. Section 2242 of the Code states:

25 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022  
26 without an appropriate prior examination and a medical indication, constitutes unprofessional  
27 conduct.

28 ///

1       “(b) No licensee shall be found to have committed unprofessional conduct within the  
2 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of  
3 the following applies:

4       “(1) The licensee was a designated physician and surgeon or podiatrist serving in the  
5 absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs  
6 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return  
7 of his or her practitioner, but in any case no longer than 72 hours.

8       “(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed  
9 vocational nurse in an inpatient facility, and if both of the following conditions exist:

10       “(A) The practitioner had consulted with the registered nurse or licensed vocational nurse  
11 who had reviewed the patient's records.

12       “(B) The practitioner was designated as the practitioner to serve in the absence of the  
13 patient's physician and surgeon or podiatrist, as the case may be.

14       “(3) The licensee was a designated practitioner serving in the absence of the patient's  
15 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized  
16 the patient's records and ordered the renewal of a medically indicated prescription for an amount  
17 not exceeding the original prescription in strength or amount or for more than one refill.

18       “(4) The licensee was acting in accordance with Section 120582 of the Health and Safety  
19 Code.”

20       8.     Section 725 of the Code states:

21       “(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering  
22 of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated  
23 acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of  
24 the community of licensees is unprofessional conduct for a physician and surgeon, dentist,  
25 podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language  
26 pathologist, or audiologist.

27       “(b) Any person who engages in repeated acts of clearly excessive prescribing or  
28 administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of

1 not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or by  
2 imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and  
3 imprisonment.

4 “(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or  
5 administering dangerous drugs or prescription controlled substances shall not be subject to  
6 disciplinary action or prosecution under this section.

7 “(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section  
8 for treating intractable pain in compliance with Section 2241.5.”

9 9. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain  
10 adequate and accurate records relating to the provision of services to their patients constitutes  
11 unprofessional conduct.”

12 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

13 10. Code section 4021 states:

14 “‘Controlled substance’ means any substance listed in chapter 2 (commencing with Section  
15 11053) of Division 10 of the Health and Safety Code.”

16 11. Code section 4022 provides:

17 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in  
18 humans or animals, and includes the following:

19 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
20 prescription,’ ‘Rx only’ or words of similar import.

21 “(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale  
22 by or on the order of a \_\_\_\_\_,’ ‘Rx only,’ or words of similar import, the blank to be filled  
23 in with the designation of the practitioner licensed to use or order use of the device.

24 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
25 prescription or furnished pursuant to Section 4006.”

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**FACTUAL ALLEGATIONS**

12. Respondent, an orthopedic surgeon, first performed knee surgery on Patient 1 in 1995.<sup>1</sup> At that time, the patient was a then 39-year-old female. Respondent performed subsequent knee surgeries on the patient in 1997, 2003, 2005 and 2007. He has not operated on her since 2007.

13. At the time of Respondent's interview with the Board on December 21, 2017, Respondent stated that Patient 1 had been his patient off and on for 20-plus years. Respondent estimated that he typically saw the patient at least once a year in follow up and while he had not operated on her since 2007, he continued to treat her with medication and therapy. Medications prescribed by Respondent include opioid pain relievers, muscle relaxants, anti-inflammatories and sedatives.

14. Respondent's medical chart for Patient 1 does not have a pain management contract. Respondent's medical chart for Patient 1 does not have any written documentation reflecting pain medication counseling nor does it have any comprehensive assessments necessary to monitor chronic opioid management. None of the notes include any of the following necessary elements to manage chronic opioid patients: counseling about overdose and other risks, patient consent, pain management agreement, risk assessment and regular drug screens, functional improvement due to opioid use not attainable otherwise, referrals to address reducing or removing opioids, and any data search results from the Controlled Substance Utilization Review and Evaluation System ("CURES").

15. Respondent's medical chart for Patient 1 reflects that he saw her on January 17, 2012 and noted that she is doing great. He noted that her knees are stable. He noted that she takes a

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<sup>1</sup> For privacy purposes, the patient in this Accusation is referred to as Patient 1, with identity of the patient disclosed to Respondent in discovery.

1 combination of Soma<sup>2</sup> and Vicodin<sup>3</sup> and Meloxicam<sup>4</sup> for her lumbar spine. He further noted:  
2 "I've renewed the medication; she seems to be taking it at a reasonable dose. I'll see her back as  
3 needed and at least once per year." That same day, Respondent prescribed the patient 60 tablets  
4 of Ambien<sup>5</sup> 10 milligrams with five refills, 120 tablets of Vicodin ES 7.5/750 milligrams with  
5 five refills, 60 tablets of Metaxalone<sup>6</sup> 800 milligrams with five refills and 90 tablets of  
6 Meloxicam 15 milligrams with five refills.

7 16. On February 9, 2012, Respondent prescribed the patient 60 tablets of Metaxalone 800  
8 milligrams with five refills.

9 17. On June 13, 2012, Respondent prescribed the patient 120 tablets of Vicodin ES  
10 7.5/750 milligrams with five refills.

11 18. On June 14, 2012, Respondent prescribed the patient 60 tablets of Ambien 10  
12 milligrams with three refills.

13 19. On July 6, 2012, Respondent prescribed the patient 60 tablets of Metaxalone 800  
14 milligrams with no refills and 90 tablets of meloxicam 15 milligrams with no refills.

15 20. On or about August 3, 2012, Respondent prescribed the patient 30 tablets of  
16 Meloxicam 15 milligrams with five refills.

17 21. On November 12, 2012, Respondent prescribed the patient 120 tablets of Vicodin ES  
18 7.5/750 milligrams with three refills and 30 tablets of Ambien 10 milligrams with three refills.

19 22. On February 18, 2013, Respondent prescribed the patient 120 tablets of Vicodin ES  
20 7.5/750 milligrams with three refills.

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22  
23 <sup>2</sup> On December 12, 2011, Soma, a muscle relaxant, became classified as a Schedule IV Controlled  
Substance and a dangerous drug.

24 <sup>3</sup> Vicodin is a brand name for hydrocodone-acetaminophen. In 2013, hydrocodone-acetaminophen  
25 was a Schedule III Controlled Substance. Commencing on October 6, 2014, hydrocodone-acetaminophen  
became classified as a Schedule II Controlled Substance and a dangerous drug.

26 <sup>4</sup> Meloxicam is a nonsteroidal anti-inflammatory drug.

27 <sup>5</sup> Ambien, a sedative, is a Schedule IV Controlled substance and a dangerous drug.

28 <sup>6</sup> Metaxalone is a muscle relaxant.

1       23. On February 20, 2013, Respondent prescribed the patient 30 tablets of Ambien 10  
2 milligrams with three refills.

3       24. Respondent saw the patient on March 14, 2013 for complaints of an acute onset of  
4 right leg pain. He examined the patient and reviewed x-rays of her hip and lumbar spine. He  
5 noted that the x-rays of her back showed degenerative changes throughout the lumbar spine and  
6 mild degenerative scoliosis and complete collapse of 4 on 5. He referred her out for an epidural  
7 block and planned to see her a couple of weeks after the injection.

8       25. On March 18, 2013, Respondent prescribed the patient 30 tablets of Meloxicam 15  
9 milligrams with five refills.

10       26. Respondent saw the patient on April 25, 2013 for a follow up of her back symptoms.  
11 Respondent noted that the patient's last epidural shot did not make a difference. He noted that the  
12 patient had clear sciatica symptoms of the right leg, buttock, thigh and calf down to the foot,  
13 positive straight leg raising and a decreased ankle jerk on the right side. No physical examination  
14 is documented. With respect to recommendations, he noted "We need to do an MRI scan because  
15 we need to get serious about treatment."

16       27. Respondent last saw Patient 1 on April 30, 2013. His progress note for that visit  
17 reflects that he reviewed the patient's MRI of the back taken on April 29, 2013. He  
18 recommended a repeat lumbar epidural injection and gave her the names of two back surgeons.  
19 Also on April 30, 2013, Respondent prescribed the patient 60 tablets of Percocet<sup>7</sup> 5/325  
20 milligrams with no refills and a Lidoderm patch with 1 refill.

21       28. For over a year after Patient 1's last office visit with Respondent, he continued to  
22 prescribe pain medications to her.

23       29. On May 6, 2013, Respondent prescribed the patient 60 tablets of Metaxalone 800  
24 milligrams with five refills.

25       30. On May 29, 2013, Respondent prescribed the patient 120 tablets of Vicodin 7.5/750  
26 milligrams with three refills and 30 tablets of Ambien 10 milligrams with five refills.

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28       <sup>7</sup> Percocet, an opioid, is a Schedule II Controlled substance and a dangerous drug.

1        31. On June 7, 2013, Respondent prescribed the patient 100 tablets of Percocet 5/325  
2 milligrams with no refills and 30 tablets of meloxicam 15 milligrams with five refills.

3        32. On July 12, 2013, Respondent prescribed the patient 100 tablets of Percocet 5/325  
4 milligrams with no refills.

5        33. On August 13, 2013, Respondent prescribed the patient 100 tablets of Percocet 5/325  
6 milligrams with no refills.

7        34. On September 9, 2013, Respondent prescribed the patient 100 tablets of Percocet  
8 5/325 milligrams with no refills.

9        35. On September 20, 2013, Respondent prescribed the patient 120 tablets of Vicodin ES  
10 7.5/750 milligrams with five refills. The prescription was filled on September 23, 2013, October  
11 21, 2013, November 13, 2013, December 19, 2013, January 20, 2014 and February 7, 2014.

12       36. On September 20, 2013, Respondent also prescribed the patient 30 tablets of  
13 Meloxicam 15 milligrams with five refills and 60 tablets of Metaxalone 800 milligrams with five  
14 refills.

15       37. On October 22, 2013, Respondent prescribed the patient 30 tablets of Ambien 10  
16 milligrams with five refills. The prescription was filled on November 13, 2013, December 5,  
17 2013, January 2, 2014, January 27, 2014 and February 20, 2014.

18       38. On January 29, 2014, Respondent prescribed the patient 60 tablets of Metaxalone 800  
19 milligrams with 5 refills.

20       39. On February 21, 2014, Respondent prescribed the patient 100 tablets of Norco<sup>8</sup>  
21 7.5/3.25 milligrams with three refills. The prescription was filled on February 21, 2014, March  
22 17, 2014, April 9, 2014 and May 5, 2014.

23       40. On February 21, 2014, Respondent prescribed the patient 60 tablets of Metaxalone  
24 800 milligrams with 3 refills. The prescription was filled on March 17, 2014, April 9, 2014 and  
25 May 5, 2014.

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27       <sup>8</sup> Norco, an opioid, is a brand name for hydrocodone-acetaminophen. In 2013, hydrocodone-  
28 acetaminophen was a Schedule III Controlled Substance. Commencing on October 6, 2014, hydrocodone-  
acetaminophen became classified as a Schedule II Controlled Substance and a dangerous drug.

41. On March 17, 2014, Respondent prescribed the patient 30 tablets of Ambien 10 milligrams with three refills..

42. On May 27, 2014, Respondent prescribed the patient 100 tablets of Norco 7.5/3.25 milligrams with five refills. The prescription was filled on May 28, 2014, June 20, 2014, July 15, 2014 and August 19, 2014.

43. On June 23, 2014, Respondent prescribed the patient 30 tablets of Ambien 10 milligrams with three refills.

44. On July 15, 2014, Respondent prescribed the patient 60 tablets of Metaxalone 800 milligrams with five refills.

45. The patient died in Florida on July 31, 2014 of a pulmonary thromboembolism as a result of deep vein thrombosis. The Florida coroner concluded that the manner of death was natural.

## STANDARD OF CARE

46. The standard of medical practice in California requires that chronic pain management include regular counseling about overdose and other risks, patient consent, pain management agreement, risk assessment and regular drug screens, assess functional improvement due to opioid use not attainable otherwise, referrals to address reducing or removing opioids, and data search results from CURES.

47. The standard of medical practice in California requires that when providing chronic pain management, the physician's record keeping include documentation of regular counseling about overdose and other risks, patient consent, pain management agreement, risk assessment and regular drug screens, assess functional improvement due to opioid use not attainable otherwise, referrals to address reducing or removing opioids, and data search results from the CURES.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence – Opioid Management)**

3 48. Respondent is subject to disciplinary action under section 2234, subdivision (b), of  
4 the Code, in that he engaged in gross negligence in his opioid management of Patient 1.  
5 Complainant refers to and, by this reference, incorporates herein, paragraphs 12 through 47,  
6 above, as though fully set forth herein. The circumstances are as follows:

7 A. There was no medical basis or indication for the long term drug prescriptions  
8 Respondent prescribed for the patient. Chronic pain management requires regular counseling  
9 about overdose and other risks, patient consent, pain management agreement, risk assessment and  
10 regular drug screens, assess functional improvement due to opioid use not attainable otherwise,  
11 referrals to address reducing or removing opioids, and data search results from CURES. For over  
12 a year after the patient's last office visit with Respondent, he continued to prescribe pain  
13 medications to her.

14 49. Respondent's acts and/or omissions as set forth in paragraphs 12 through 47, above,  
15 whether proven individually, jointly, or in any combination thereof, constitute gross negligence  
16 pursuant to section 2234, subdivision (b), of the Code. Therefore cause for discipline exists.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Gross Negligence – Record Keeping)**

19 50. Respondent is subject to disciplinary action under section 2234, subdivision (b), of  
20 the Code, in that he engaged in gross negligence in his record keeping for Patient 1. Complainant  
21 refers to and, by this reference, incorporates herein, paragraphs 12 through 49, above, as though  
22 fully set forth herein. The circumstances are as follows:

23 A. Respondent's medical chart for Patient 1 does not have any written  
24 documentation reflecting pain medication counseling nor does it have any comprehensive  
25 assessments necessary to monitor chronic opioid management.

26 B. None of the notes in Respondent's medical chart for Patient 1 include any of  
27 the following necessary elements to manage chronic opioid patients: counseling about overdose  
28 and other risks, patient consent, pain management agreement, risk assessment and regular drug

1 screens, functional improvement due to opioid use not attainable otherwise, referrals to address  
2 reducing or removing opioids, and any data search results from CURES.

3 51. Respondent's acts and/or omissions as set forth in paragraphs 12 through 49, above,  
4 whether proven individually, jointly, or in any combination thereof, constitute gross negligence  
5 pursuant to section 2234, subdivision (b), of the Code. Therefore cause for discipline exists.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Repeated Negligent Acts)**

8 52. Respondent is subject to disciplinary action under section 2234, subdivision (c), of  
9 the Code, in that he engaged in repeated acts of negligence in the care and treatment of Patient 1.  
10 Complainant refers to and, by this reference, incorporates herein, paragraphs 12 through 51,  
11 above, as though fully set forth herein. The circumstances are as follows:

12 A. There is no medical basis for the long term drug prescriptions Respondent  
13 prescribed for the patient. Chronic pain management requires regular counseling about overdose  
14 and other risks, patient consent, pain management agreement, risk assessment and regular drug  
15 screens, assess functional improvement due to opioid use not attainable otherwise, referrals to  
16 address reducing or removing opioids, and data search results from CURES. For over a year after  
17 the patient's last office visit with Respondent, he continued to prescribe pain medications to her.

18 B. Respondent's medical chart for Patient 1 does not have any written  
19 documentation reflecting pain medication counseling nor does it have any comprehensive  
20 assessments necessary to monitor chronic opioid management.

21 C. None of the notes in Respondent's medical chart for Patient 1 include any of  
22 the following necessary elements to manage chronic opioid patients: counseling about overdose  
23 and other risks, patient consent, pain management agreement, risk assessment and regular drug  
24 screens, functional improvement due to opioid use not attainable otherwise, referrals to address  
25 reducing or removing opioids, and any data search results from CURES.

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53. Respondent's acts and/or omissions as set forth in paragraphs 12 through 51, above, whether proven individually, jointly, or in any combination thereof, constitute repeated acts of negligence pursuant to section 2234, subdivision (c), of the Code. Therefore cause for discipline exists.

#### FOURTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct - Furnishing Dangerous Drugs Without Examination)**

54. Respondent is subject to disciplinary action under Code section 2242, subdivision (a), in that he committed unprofessional conduct when he prescribed dangerous drugs to Patient 1 without an appropriate prior examination or medical indication therefor. Complainant refers to and, by this reference, incorporates herein, paragraphs 12 through 51, above, as though fully set forth herein.

55. Respondent's acts and/or omissions as set forth in paragraphs 12 through 51, above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct pursuant to section 2242, subdivision (a), of the Code. Therefore cause for discipline exists.

### FIFTH CAUSE FOR DISCIPLINE

**(Excessive Prescribing)**

56. Respondent is subject to disciplinary action under Code section 725, in that he excessively prescribed dangerous drugs to Patient 1. Complainant refers to and, by this reference, incorporates herein, paragraphs 12 through 55, above, as though fully set forth herein.

57. Respondent's acts and/or omissions as set forth in paragraphs 12 through 55, above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct pursuant to section 725. Therefore cause for discipline exists.

### SIXTH CAUSE FOR DISCIPLINE

**(Failure to Maintain Adequate and Accurate Medical Records)**

58. Respondent is subject to disciplinary action under section 2266 of the Code for failing to maintain adequate and accurate records relating to his care and treatment of Patient 1.

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1 Complainant refers to and, by this reference, incorporates herein, paragraphs 12 through 51,  
2 above, as though fully set forth herein.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
5 and that following the hearing, the Medical Board of California issue a decision:

- 6 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 52355,  
7 issued to Dwite Dean Dahms, M.D.;
- 8 2. Revoking, suspending or denying approval of his authority to supervise physician  
9 assistants pursuant to section 3527 of the Code, and advanced practice nurses;
- 10 3. If placed on probation, ordering him to pay the Board the costs of probation  
11 monitoring; and
- 12 4. Taking such other and further action as deemed necessary and proper.

13  
14 DATED: April 25, 2018

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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